

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

DONALD GREEN,
CDCR #J-50400,

Plaintiff,

vs.

D. NIETO; A. GARCIA; J. TIM OCHOA,

Defendant.

Civil No. 12-0142 LAB (MDD)

**ORDER DISMISSING CIVIL
ACTION WITHOUT PREJUDICE
FOR FAILING TO PAY
FILING FEE REQUIRED
BY 28 U.S.C. § 1914(a) AND/OR
FAILING TO MOVE TO PROCEED
IN FORMA PAUPERIS
PURSUANT TO
28 U.S.C. § 1915(a)**

Donald Green (“Plaintiff”), a state inmate currently housed at California State Prison located in Lancaster, California, and proceeding pro se, has filed a civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff has not prepaid the \$350 filing fee mandated by 28 U.S.C. § 1914(a) to commence a civil action; nor has he filed a Motion to Proceed *In Forma Pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a).

I. Failure to Pay Filing Fee or Request IFP Status

All parties instituting any civil action, suit or proceeding in any district court of the United States, except an application for writ of habeas corpus, must pay a filing fee of \$350. *See* 28 U.S.C. § 1914(a). An action may proceed despite a party’s failure to pay this filing fee only if the party is granted leave to proceed *in forma pauperis* (“IFP”) pursuant to 28 U.S.C.

1 § 1915(a). *See Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v. Cook*,
2 169 F.3d 1176, 1177 (9th Cir. 1999).

3 Because Plaintiff has not prepaid the \$350 filing fee and he has not requested leave to
4 proceed IFP, his case cannot commence and must be dismissed pursuant to 28 U.S.C. § 1914(a).
5 *Id.*

6 **II. Conclusion and Order**

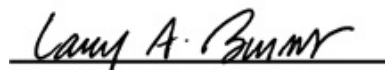
7 For the reasons set forth above, the Court hereby:

8 (1) **DISMISSES** this action sua sponte without prejudice for failing to pay the \$350
9 filing fee or file a Motion to Proceed IFP pursuant to 28 U.S.C. §§ 1914(a) and 1915(a); and

10 (2) **GRANTS** Plaintiff **forty five (45)** days leave from the date this Order is filed to:
11 (a) prepay the entire \$350 civil filing fee in full; *or* (b) complete and file a Motion to Proceed
12 IFP which includes a certified copy of his inmate trust account statement for the 6-month period
13 preceding the filing of his Complaint. *See* 28 U.S.C. § 1915(a)(2); S.D. CAL. CIVLR 3.2(b).

14 **IT IS FURTHER ORDERED** that the Clerk of the Court shall provide Plaintiff with this
15 Court's approved form "Motion and Declaration in Support of Motion to Proceed *In Forma*
16 *Pauperis*." If Plaintiff fails to either prepay the \$350 civil filing fee or complete and submit the
17 enclosed Motion to Proceed IFP within that time, this action shall remain dismissed without
18 prejudice and without further Order of the Court.

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21 DATED: January 20, 2012

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24 **HONORABLE LARRY ALAN BURNS**
25 United States District Judge
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